

ACTION BY: Regional Directors
Special Nutrition Programs

SOURCE CITATION: Section 226.15

Moving Toward Tax-Exempt Status
in the Child and Adult Care Food Program

This Instruction provides specific guidance on the administration of those provisions in the National School Lunch Act (NSLA) and Child and Adult Care Food Program (CACFP) regulations which deal with "moving toward" tax-exempt status under the Program.

Section 17 (d) (1) of the NSLA allows any eligible private institution to be approved for participation in the CACFP if it has tax-exempt status under the Internal Revenue Code of 1986 or, "...under conditions established by the Secretary, is moving toward compliance with the requirements for tax-exempt status." Section 226.15 (a) of the regulations states, in part: "An institution which has applied to IRS for tax-exempt status may participate in the program while its application is pending review by IRS. It shall, however, be the responsibility of the institution to document that it has complied with all requirements of IRS and has provided all information requested. If IRS denies the application for tax-exempt status, the institution shall immediately notify the State agency of such denial. The State agency shall then terminate the participation of the institution. If IRS certification of tax-exempt status has not been received within 12 months of filing the application with IRS, and IRS indicates that the institution has failed to provide all the required information, the State agency shall terminate the participation of the institution until such time as IRS tax-exempt status is obtained."

Given the fact that the amount of time and effort required to obtain tax-exempt status cannot be predicted, it is the responsibility of the State agency to ensure that institutions without tax-exempt status are participating in the CACFP only while legitimately awaiting action on their application by IRS. In order to more effectively carry out these responsibilities, State agencies should notify all institutions which apply to participate in the CACFP under the "moving toward" provision of the specific requirements which govern their participation. Further, the State agency should require institutions to submit within a reasonable amount of time copies of all correspondence sent to and received from IRS, including a copy of the letter from IRS which acknowledges receipt of the institutions applications for

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nonprofit status and notification that the institutions' applications are complete and/or approved. The State agency should also inform the institutions that, if IRS denies their application, their participation in CACFP will cease on the date of the letter from IRS.

The Division interprets the "moving toward" provision in the NSLA as requiring a good faith effort on the part of the institution to obtain tax-exempt status. In light of that fact, State agencies should carefully review the correspondence between IRS and institutions to ascertain whether the institutions are complying with IRS requests in a timely and complete manner. When it is evident that an institution is not being responsive to the IRS, the State agency shall advise the institution that failure to actively pursue tax exempt status is grounds for removal from CACFP. Continued nonresponsiveness shall result in the institution's termination.

An institution denied tax-exempt status by IRS may not be approved to participate until it has received tax-exempt status.

A handwritten signature in black ink, appearing to read "Stanley S. Garnett", is written over a horizontal line.

STANLEY S. GARNETT
Director
Child Nutrition Division